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No. 615

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

LOUIE A. FALSETTI, Successor Administrator with Will Annexed in the Estate of B. F. Guido, Deceased, et al.,
Petitioners,

v.

STELLA MARIE LOWMAN and her husband LAWRENCE GILBERT LOWMAN, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondents Stella Marie Lowman and husband Lawrence Gilbert Lowman pray that this Court deny the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

STATUTE INVOLVED

The pertinent Texas statute involved is:

> **"Art. 1982, V.C.S.A., 1837, 1198, 1202 For lands against decedents**
>
> "In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties

defendant. Acts 1870, p. 173; G.L. vol. 6, p. 347; P.D. 5697."

QUESTIONS PRESENTED

Respondents restate the questions presented since Petitioners' statements thereof are not responsive to the facts, law and issues:

1. Whether the decision of the Court of Appeals holding a Texas State Court judgment to be final, valid and regular on its face, to have been rendered in compliance with Article 1982, V.C.S.A., to import absolute verity and to be entitled to every reasonable presumption of validity, violates due process.

2. Whether the Court of Appeals is empowered on appeal to correct errors of a Federal District Court and to deny a stay of proceedings (by which Petitioners seek to institute a third suit in the State Court, involving the same parties, subject matter and issues as were decided adversely to Petitioners in this Federal and a prior State Court suits).

3. Whether a Texas State Court judgment, final and valid, regular on its face, disposing of all parties, subject matter and issues, in a suit to which all interested parties in every capacity were made parties defendant pursuant to Article 1982, V.C.S.A., is void and subject to collateral attack.

STATEMENT

Petitioners instituted this action in the Federal District Court collaterally attacking a final judgment of the District Court of Brazoria County, Texas, dated September 16, 1960, and entered October 18, 1960, seeking (1) to have it declared void and (2) to enjoin permanently the enforcement of said judgment, merely alleging that a decedent's estate "was neither duly, properly, nor adequately represented" in the State Court suit (R. 18-23, 147-148).

Petitioners joined as defendants two pipeline companies which were *mere stakeholders* and which assert no claim to the property sued for (R. 23-28, 135-147).

Respondents urged various motions, defenses and claims, to-wit: (1) The State Court judgment was a final and valid judgment, regular on its face and containing absolute jurisdictional recitals; (2) there was total and literal compliance with Article 1982, V.C.S.A.; (3) the State Court had complete jurisdiction of the Brazoria County land, all of the interested parties and the issues, and disposed of same; (4) the State Court judgment was *res judicata;* (5) various theories of estoppel and waiver; (6) to enforce and establish reciprocal and mutual wills and/or contract therefor; and (7) various other alternative pleas (R. 36-69, 109-130, 175-178).

Numerous other respondents, who were remaindermen, adopted Respondent's pleadings (R. 149-157).

The Court of Appeals, in reversing the judgment of the Federal District Court, *held*: (1) The State Court judgment was a final and valid judgment, regular on its face; (2) imported absolute verity; (3) every reasonable presumption necessary to uphold such judgment on collateral attack will be indulged; (4) Respondents had complied with Article 1982, V.C.S.A.; (5) Petitioners were made parties defendant to the State Court suit in all capacities, *i.e.*, individually, as devisee, and as representative of the decedent's estate, and participated in said suit in one capacity or another for approximately two years; (6) Petitioner Mrs. Falsetti was represented by counsel in the State Court suit, and was the real party in interest throughout the proceedings; (7) there was no representative of the decedent's estate at the time of the judgment; (8) prior to the entry of the State Court judgment, the Probate Court had dismissed the representative (Petitioner Mrs. Falsetti) for

failure to discharge her duties as such, and had refused to act on three successive applications for the appointment of a successor representative on the ground there was no necessity therefor; (9) Petitioners acted adversely to the estate; and (10) the State Court judge was entitled to consider the facts and circumstances surrounding the conduct of Petitioners (R. 416-435; Exhibit "B" to Petition for Writ of Certiorari).

The facts of this case are undisputed: (1) The State Court judgment became final, no appeal or writ of error having ever been perfected therefrom by any party (R. 38, 234, 297, 281); (2) all interested parties in the decedent's estate were made parties defendant to the State Court suit, including Petitioners individually, as devisee, and as foreign (California) and ancillary (Texas) representative (R. 7-17, 38-39, 109-110, 130-131, 235, 298); (3) Petitioners were parties defendant in all capacities, individually, as devisee, and as representatives, and as such actively participated in person and by counsel in said suit for nearly two years (R. 39, 43, 46-68, 164, 180-181, 286, 288); (4) Petitioners filed pleas in abatement and to jurisdiction that they could not be sued as foreign representative (to have required them to remain parties in suc' capacity would have constituted reversible error under Texas law) (R. 46-48), exceptions (R. 49), denials (R. 53), motions (R. 66-68), invoked the statute of limitation (R. 55-57), and affirmatively claimed the entire decedent's estate against all others (R. 62, 6', 286); (5) Petitioner represented that the administration was closed and no debts were left unpaid (R. 45, 62, 67, 287-288); (6) Petitioner *admittedly* asserted individual and absolute ownership of the decedent's estate adverse to and against every other devisee or person who had or might have an interest therein, including Respondents (R. 43, 59, 64, 111, 131, 286); (7)

the Probate Court of Brazoria County, Texas, prior to the State District Court judgment, removed Petitioner as ancillary representative for failure to discharge duties, *i.e.*, refusal to file an inventory, Federal estate and Texas inheritance tax returns although all were delinquent and although Petitioner had been called upon to do so (R. 39, 42-43, 84, 180) and refused to appoint a successor administrator on the ground there was no necessity therefor although three separate applications therefor were duly made and citation perfected (R. 68, 39, 42-43, 44, 86, 91-92, 289, 316-329, 235, 297); (8) Petitioner (Mrs. Falsetti) was expressly bound by the State Court judgment individually and as devisee (R. 7-17); and (9) there was *no* representative at the time the State Court judgment was rendered.

The background facts are likewise undisputed: (1) Respondent Stella Marie Lowman is the daughter and sole heir of Dora Frank Guido deceased (R. 231) and Respondent Lawrence Gilbert Lowman is her husband; (2) Dora Frank Guido and B. F. Guido were husband and wife from July 31, 1931, until her death (R. 230); (3) Dora Frank Guido owned the property involved in this litigation *as her separate property* (R. 176, 216, 230, 293); (4) in 1949, Dora Frank Guido died testate survived by her husband B. F. Guido and her only child and sole heir Respondent Stella Marie Lowman (R. 231, 294), and her last will, dated in 1942, devised the residue of her estate to her husband B. F. Guido but, if he predeceased her, it devised her entire estate in trust with directions that the income be paid to her daughter Stella Marie Lowman for her life, and thereafter, under certain circumstances, to the daughter's husband for life with one-half of the remainder to her collateral heirs and one-half to B. F. Guido's collateral heirs, said will expressly providing:

> "(8) This WILL is made in consideration of the making on this same day, by my husband, B. F. Guido, of a will with the same terms and provisions, and it is our intention to create a TRUST ESTATE as herein provided for the benefit of Mrs. Stella Marie Lowman and her husband, after her death, and for the distribution of the Trust Estate after termination of the Trust in the manner and terms herein set forth."

(R. 231, 293-294, 123-130, 281); (5) the surviving husband offered said will for probate, qualified as representative thereof, took possession and appropriated the entire estate to his benefit until his death (R. 231-232, 294, 295, 57); (6) in April, 1951, B. F. Guido married Doris C. M. Guido (now Petitioner Doris C. M. Falsetti) (R. 232, 295); (7) in 1957, B. F. Guido died testate and a subsequent will, dated July 3, 1951, was admitted to probate and the Petitioner Doris C. M. Falsetti was appointed and qualified as the foreign and ancillary representative (R. 233, 295-296); (8) there was no representative at the time of the State Court judgment, the Petitioners having been removed as ancillary representative for failure to discharge her duties and the Court having refused to appoint a successor on the grounds of no necessity therefor (see above); (9) on October 18, 1960, the State Court entered a final and valid judgment, dated September 16, 1960 (now collaterally attacked), enforcing and establishing the reciprocal-mutual will of Dora Frank Guido or contract therefore as against the subsequent will, which judgment expressly bound Petitioner Doris C. M. Falsetti individually and as devisee (R. 7, 305, 281); (10) subsequent to the entry of the State Court judgment, Petitioners Louie A. Falsetti and Doris C. M. Falsetti were married (R. 234, 297); and (11) after the State Court judgment had become final, Petitioner Louie A. Falsetti

was appointed successor administrator for the limited purpose of attacking the State Court judgment and filed the present Federal suit (R. 234, 297, 330-333).

REASONS FOR DENYING THE WRIT

The Court of Appeals correctly *held* that (1) The State Court judgment was a final and valid judgment, regular on its face, imported absolute verity, and entitled to every reasonable presumption necessary to uphold it on collateral attack; and (2) there was compliance with Article 1982, V.C.S.A. The holding and the reasons therefor are in accordance with the uncontroverted facts and the fundamental law of Texas.

First, there was a total and literal compliance with Article 1982, V.C.S.A.

This statute merely provides that in every land title suit against the estate of a decedent, "the executor or administrator, *if any*, and the heirs shall be made parties defendant." Petitioners were made parties defendant in all capacities, individually, as devisee, and as representative (foreign and ancillary). The requirements of the statute were met.

Second, the rules sustaining such a judgment on collateral attack are well established.

A judgment of a court of general jurisdiction, rendered in the exercise of its usual powers and regular on its face, imports absolute verity. When such a judgment is collaterally attacked, every reasonable presumption necessary to uphold it will be indulged, the existence of necessary jurisdictional facts will be presumed, and it will be presumed that the court complied with all mandatory provisions regulating its exercise of power. A judgment may

not be collaterally attacked for mistakes of fact or inadvertence. If the court has duly acquired jurisdiction of the subject matter and parties, its judgment cannot be a nullity; on the contrary, it is valid however erroneous it may be and invulnerable to assault in a collateral proceeding.

Hartel v. *Dishman*, 135 Tex. 600, 145 S.W. 2d 865;
Williams v. *Tooke*, 5th Cir., 108 F. 2d 758;
Hendron v. *Yount-Lee Oil Co.*, 5th Cir., 108 F. 2d 759;
O'Connor v. *O'Connor*, 5th Cir., 315 F. 2d 420;
Levy v. *Roper*, 113 Tex. 356, 256 S.W. 251;
Williams v. *Tooke*, 116 S.W. 2d 1114, error dismissed;
Manifee v. *Hamilton*, 32 Tex. 495;
Houston Oil Co. v. *Bayne*, 141 S.W. 544, error refused;
34 Tex. Jur. 2d, Section 325, Sections 344-351 (Judgments).

In *Hartel* v. *Dishman, supra,* the rules relating to attack upon judgments are laid down:

> "It was stated by this court in the case of Pure Oil Co. v. Reece, supra (124 Tex. 476, 78 S.W. 2d 934), 'It is the settled law of this state that where a judgment is collaterally attacked, plain jurisdiction recitals * * * must be accorded absolute verity.' * * *
>
> "In the case of Weems v. Masterson, 80 Tex. 45, 55, 15 S.W. 590, 592, Stayton, C. J., speaking for the court, said: 'A proposition that a judgment of a district court could be attacked in a collateral proceeding because pleadings were defective, if the court had jurisdiction of the subject-matter and the parties, would not be advanced, and it would be readily conceded that, however erroneous such a judgment might be, it would be conclusive on the parties until set aside by some direct proceeding for that purpose; and we are of opinion that this would be true even if the pleadings were so defective as to be bad on general demurrer, or as to present no issue of fact.'"

In *Williams* v. *Tooke, supra,* an independent Federal Court suit to set aside a prior State Court judgment on the ground that the State Court was without jurisdiction because the petition failed to allege that plaintiff's ancestor had died intestate and administration was unnecessary and that its judgment was void and a denial of due process, the Court of Appeals affirmed a judgment dismissing the suit for want of jurisdiction, stating:

> "The purpose of the suit is clearly to seek a review of the decisions of the Texas courts and the reversal of those decisions for error. The jurisdiction of the District Court is strictly original. It had no jurisdiction to reverse or modify the judgment of a state court. * * * It was the duty of the District Court to dismiss the suit."

In accord is *Hendron* v. *Yount-Lee Oil Co., supra,* holding that the Federal District Court was without jurisdiction for want of presentation of a substantial Federal question.

In *O'Connor* v. *O'Connor, supra,* a suit involving land, 'the gravamen of his (plaintiff's) complaint is that he was sued in State court individually and not in his representative capacity and because of this, it is asserted, the order of the State court appointing a receiver and directing an accounting is a nullity." The court held:

> "The question here presented was raised in the Texas litigation and it was there decided that, under the law of Texas, it was not necessary that the appellant be sued in his representative capacity as executor for an accounting and for the appointment of a receiver where he had refused to account when called upon to do so. * * * All of the persons who had any interest in the estate were parties to the Texas litigation."

The present case, as the *O'Connor* case did, involves a representative who acted *"adversely to the estate."*

In *Levy* v. *Roper, supra,* the court denied the right of a person in a subsequent proceeding to attack, either collaterally or directly, a prior judgment for non-joinder of the representative of an estate.

Third, in Texas, title to a decedent's property vests instantly with death in the decedent's heirs or devisees subject to administration for "payment of the debts of the testator or intestate." Texas Probate Code, Section 37.

Thus, title to a decedent's property vests neither in the representative nor the "estate" (which is not even a legal entity for such purpose) and the administration is solely for the benefit of creditors. Title is in the heirs and devisees.

The State Court judgment adjudicated title as between the various devisees in whom title was vested and expressly bound the Petitioner Mrs. Falsetti individually and as devisee. Petitioners ignore the undisputed facts that they represented to the State Court that there were no debts and the estate had been closed, that the Probate Court had found no necessity for a representative and had refused to appoint a successor, and that there was no representative.

Fourth, the State Court Judge was entitled to consider the facts and circumstances surrounding the conduct of Petitioners in rendering the final and valid State Court judgment.

The Court of Appeals is correct in holding that the trial court judge was entitled to consider the facts and circumstances surrounding the conduct of Petitioners. Petitioners were made parties defendant, had actively participated in the State Court suit for approximately two years in person and by counsel, had represented there were no debts and the estate was closed, had been removed as ancillary representative for failure to discharge duties and significantly *adversely* refused to discharge her duties and *adversely*

claimed the entire estate against every other person who had or might have an interest therein.

Notwithstanding there had been compliance with Article 1982, V.C.S.A., there are well defined exceptions to the statute, to-wit:

(1) *Want of Administrator:* The statute recognizes this when it provides that the "administrator, *if any* * * * shall be made parties defendant." It expressly contemplates situations in which there is no administrator for whatever reason.

(2) *Adverse Action of Administrator:* Petitioners acted adversely to the title of decedent's property and every other party interested therein. This fact is not only undisputed but admitted. Petitioner Mrs. Falsetti claimed absolute ownership of the decedent's property as against everyone, represented the estate was closed and no debts unpaid and refused to discharge her duties as ancillary representative and for such reason was removed.

(3) *No Necessity for Administration:* Petitioners represented the estate was closed and no debts unpaid and the Probate Court refused to appoint a successor for the reason there was no necessity therefor.

"It is well settled that an executor or administrator may, by his acts or omissions, raise an estoppel against his estate."

Baber v. *Houston National Exchange Bank*, 218 S.W. 156, error refused (adverse action of administrator; pleas of estoppel and *res judicata* sustained where representative, although not a party defendant, had full opportunity to defend in prior action but failed to do so).

Barney v. *Huff*, 326 S.W. 2d 617, writ refused, n.r.e.

(similar facts to present case; foreign executor who filed plea in abatement unsuccessfully sought to set aside prior judgment for no jurisdiction of representative).

18 Tex. Jur. 2d, Section 315, Page 277, Note 10.

In *Lee* v. *Turner*, 71 Tex. 264, 9 S.W. 149, the court recognized that "adverse action of the administrator" may be reason for an estoppel against an estate.

In *O'Connor* v. *O'Connor*, *supra*, the Federal Court refused to review a State Court judgment and held that it was not necessary under Texas law that a party be sued in his representative capacity when such person had acted "adversely to the estate," *i.e.*, refused to act when called upon to do so.

In *French* v. *French*, 148 S.W. 2d 930, 937, writ dismissed, involving a direct attack under Article 1982, V.C.S.A., the court recognized an exception to the general rule when it stated: "Her legal representatives should be parties hereto or a valid legal reason given for their non-joinder."

The reason that one will not be permitted to attack a judgment or the jurisdiction of the court in a suit to which such person was a party is equally well established. "The enunciated rule is founded on that principle of right and justice which estops a party from escaping liability where he has caused another to lose some right or vantage ground by his acts, words, or conduct. Milmo Nat. Bank v. Cobbs, 53 Tex. Civ. 1, 115 S.W. 345, at page 348." *Spence* v. *Bank*, Com., 5 S.W. 2d 754, and *Mauritz* v. *Schwind*, 101 S.W. 2d 1085, 1091, error dismissed.

Further, "where parties have had the opportunity of litigating certain issues, and a final judgment is entered in said cause adjudicating those issues, it is not the policy

of the law to permit a relitigation of such question." *Rio Bravo Oil Co.* v. *Hebert*, 130 Tex. 1, 106 S.W. 2d 242.

SUMMARY

The Court of Appeals, in a carefully considered opinion, has adhered to and given effect to all of the facts and the established and applicable law of Texas. Its decision is primarily based upon the facts and law that the judgment was a final and valid judgment, that there had been total and literal compliance with Article 1982, V.C.S.A., and the adverse conduct of Petitioners and not merely upon the concept of *res judicata*.

The Petitioners and the Federal District Court have wholly disregarded the facts and the applicable law.

The petition for writ of certiorari, and, consequently, Petitioners' position, is a study without merit: (1) It is a search for fancied error and Federal questions where none exists; (2) it wholly disregards the undisputed facts, particularly compliance with the statute and Petitioners' adverse conduct, as well as the applicable law; (3) it seeks review of a State Court judgment based upon alleged error arising out of Petitioners' conduct; (4) it denies, or would limit, the unquestioned power of the Court of Appeals to correct errors of the Federal District Court; (5) it would give greater effect to a judgment of Federal District Court than to the judgments of either the Court of Appeals, the U. S. Supreme Court, or the Texas trial and appellate courts; (6) it pays lip service to the underlying principle of *Erie* but in fact repudiates it; (7) it cites authority that is either not in point or that is based on vague policy in other jurisdictions; (8) it misstates the holding of the Court of Appeals; (9) it relies upon "propositions of law" without citation of authority; and (10) it seeks to impute Peti-

tioners' conduct or adverse action to Respondents as a basis for review.

The cases relied upon by Petitioners involve either (1) a situation in which the required "parties defendant" were never made such and/or (2) a direct attack. *Burrage* v. *Hunt*, 147 S.W. 2d 542, writ dismissed, involved a party and property of which a court had never obtained jurisdiction and a party who did not even have notice. *Hanson* v. *Denckla*, 357 U.S. 235, involved the law of a jurisdiction other than Texas and the title to property vested in a trustee who was never made a party defendant. The cases arising under Article 1982, V.C.S.A., cited by Petitioners involve fact situations in which either the heirs and/or representative were never made parties defendant or arose on direct attack. In effect, Petitioners cite no cases in point.

Petitioners misstate and would limit the decision of the Court of Appeals to a concept of *res judicata* and a holding that the pertinent statute was merely a notice statute. Clearly, the Court's decision was far broader than this and the Court merely stated that the purpose of the statute was to afford notice and an opportunity to defend. This is too obvious to labor. Whether it was a procedural or substantive or notice statute is immaterial. The fact is is that it was complied with.

CONCLUSION

Certiorari should be denied for the foregoing reasons.

Respectfully submitted,

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CERTIFICATE OF MAILING

This is to certify that a copy of the foregoing brief has been deposited in a United States post office or mailbox, with first class postage prepaid, addressed to the following counsel of record at his respective post office address:

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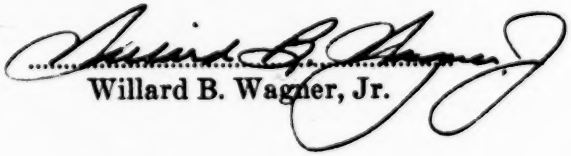

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